

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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In re:

PROMESA

Title III

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

No. 17 BK 03283-LTS

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

(Jointly Administered)

Debtors.<sup>1</sup>

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**THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO'S  
RESPONSE TO AURELIUS'S MOTION FOR LEAVE TO FILE A SUR-REPLY**

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<sup>1</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's Federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Hermann D. Bauer  
USDC No. 215205  
Ubaldo M. Fernández  
USDC No. 224807  
**O'NEILL & BORGES LLC**  
250 Muñoz Rivera Ave., Suite 800  
San Juan, PR 00918-1813  
Tel: (787) 764-8181  
Fax: (787) 753-8944  
Email: hermann.bauer@oneillborges.com  
ubaldo.fernandez@oneillborges.com

Donald B. Verrilli, Jr. (*pro hac vice*)  
Ginger D. Anders (*pro hac vice*)  
Chad I. Golder (*pro hac vice*)  
Sarah G. Boyce (*pro hac vice*)  
Adele M. El-Khoury (*pro hac vice*)  
Rachel G. Miller-Ziegler (*pro hac vice*)  
**MUNGER, TOLLES & OLSON LLP**  
1155 F Street N.W., Seventh Floor  
Washington, D.C. 20004-1357  
Tel: (202) 220-1100  
Fax: (202) 220-2300  
Email: Donald.Verrilli@mto.com  
Ginger.Anders@mto.com  
Chad.Golder@mto.com  
Sarah.Boyce@mto.com  
Adele.El-Khoury@mto.com  
Rachel.Miller-Ziegler@mto.com

Martin J. Bienenstock (*pro hac vice*)  
Stephen L. Ratner (*pro hac vice*)  
Timothy W. Mungovan (*pro hac vice*)  
Mark D. Harris (*pro hac vice*)  
Chantel L. Febus (*pro hac vice*)  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, NY 10036  
Tel: (212) 969-3000  
Fax: (212) 969-2900  
Email: mbienenstock@proskauer.com  
sratner@proskauer.com  
tmungovan@proskauer.com  
mharris@proskauer.com  
cfibus@proskauer.com

The Board submits this brief response to Aurelius's motion for leave to file a sur-reply in order to explain that it offered to consent to Aurelius's filing a sur-reply, on the condition that the sur-reply be no longer than seven pages, and that it be filed no later than December 29, 2017. The Board believes that counter-proposal accommodates Aurelius's request while avoiding unfair prejudice to the Board.

The Court's October 2, 2017, scheduling order permitted the United States to file a brief expressing its position on the constitutionality of the Board members' appointments on December 6, 2017. The scheduling order further permitted "all parties to reply to the United States" by Saturday, December 23, 2017. The Court's Third Amended Case Management order provides that "[i]f the date any Document would be due falls on a day other than a business day, such Document must be filed and served by the first business day preceding such date," which would mean all parties' replies to the government were due on December 22, 2017. On December 21, the Board informed Aurelius of its understanding that replies to the United States were due on December 22 pursuant to the Third Amended Case Management order.

At approximately 4:00 p.m. on December 22, 2017, the Board filed its reply to the United States' brief. At 6:37 p.m., counsel for Aurelius contacted counsel for the Board and sought consent to file a ten-page "sur-reply" to the Board's response to the United States by Friday, January 5. Aurelius gave the Board until 10:00 a.m. on Saturday, December 23, to respond to Aurelius's proposal.

By that deadline, the Board responded that it would consent to Aurelius filing a seven-page sur-reply by Friday, December 29, 2017. The Board explained that its proposal was designed to enable Aurelius to file the sur-reply that it believes it needs to file, while avoiding the unfair prejudice to the Board that would result from permitting Aurelius to file a new ten-

page brief just three business days before the Court's scheduled oral hearing in this matter. Accordingly, the Board provided to Aurelius the following statement of its position, and requested that Aurelius include it in Aurelius's motion:

"The Board does not believe that Aurelius is entitled to a sur-reply under this Court's orders. All parties were permitted to respond to the United States' filing. The Board filed such a reply on time pursuant to this Court's Third Amended Case Management order. That being said, to avoid unnecessary conflict, the Board will consent to Aurelius filing a 7-page sur-reply by midnight on December 29. This length and deadline will prevent unfair surprise and allow the Board sufficient time to evaluate Aurelius' filing before the upcoming hearing."

Aurelius declined to include that statement of the Board's position in its motion or to discuss further any potential resolution of the matter. Aurelius also refused the Board's subsequent request to represent in its motion that the Board will consent to Aurelius filing a seven-page sur-reply on December 29.

In its motion, Aurelius contends that the Board's reply to the United States — which focused on expressing the Board's agreement with the United States' arguments and placing those arguments in the context of Aurelius's earlier filings — included discussion of four points that were not addressed by the United States (points that, in total, make up barely a page of the Board's fifteen-page brief). The Board disagrees with Aurelius's characterization. Nonetheless, in order to avoid an unnecessary dispute, the Board continues to consent to Aurelius filing a seven-page sur-reply on December 29. That counter-proposal should give Aurelius more than ample space to address the four brief points that it has identified as requiring a response. The Board's proposal will also avoid the prejudice to the Board that would result from granting Aurelius's request to file a ten-page brief on January 5. The Board therefore respectfully requests that, should the Court decide to grant Aurelius leave to file a sur-reply, it do so on the more reasonable terms set forth in the Board's counter-proposal.

Dated: December 23, 2017  
San Juan, Puerto Rico

/s/ Hermann D. Bauer  
Hermann D. Bauer  
USDC No. 215205  
Ubaldo M. Fernández  
USDC No. 224807  
**O'NEILL & BORGES LLC**  
250 Muñoz Rivera Ave., Suite 800  
San Juan, PR 00918-1813  
Tel: (787) 764-8181  
Fax: (787) 753-8944  
Email: hermann.bauer@oneillborges.com  
ubaldo.fernandez@oneillborges.com

/s/ Donald B. Verrilli, Jr.  
Donald B. Verrilli, Jr. (*pro hac vice*)  
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1155 F Street N.W., Seventh Floor  
Washington, D.C. 20004-1357  
Tel: (202) 220-1100  
Fax: (202) 220-2300  
Email: Donald.Verrilli@mto.com  
Ginger.Anders@mto.com  
Chad.Golder@mto.com  
Sarah.Boyce@mto.com  
Adele.El-Khoury@mto.com  
Rachel.Miller-Ziegler@mto.com

/s/ Martin J. Bienenstock  
Martin J. Bienenstock (*pro hac vice*)  
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Chantel L. Febus (*pro hac vice*)  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, NY 10036  
Tel: (212) 969-3000  
Fax: (212) 969-2900  
Email: mbienenstock@proskauer.com  
sratner@proskauer.com  
tmungovan@proskauer.com

mharris@proskauer.com  
cfebus@proskauer.com

*Attorneys for The Financial Oversight and  
Management Board for Puerto Rico, as  
representative of The Commonwealth of Puerto  
Rico*

**CERTIFICATE OF SERVICE**

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer  
Hermann D. Bauer